**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 1626 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GURUKUL SARDARNAGAR SWAMINARAYAN & 1 - Petitioner(s)**
**Versus**
**REKHABA MAYURDHWAJSHREE CHUDASAMA & 1 - Respondent(s)**

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**Appearance :**

MR TULSHI R SAVANI for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,
MR HJ NANAVATI for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 16/11/2006**

**ORAL JUDGMENT**

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner

school management has challenged the legality and validity of the judgment and order passed by the Gujarat Primary Education Tribunal dated 20th April, 1995 passed in application No. 224 of 1991 by which, in an application submitted by the respondent No.1, the tribunal has directed the petitioner to reinstate the respondent No.1.

2. Number of submissions have been made on merits, however, in view of the fact that the present Special Civil Application is required to be allowed and required to be remanded to the tribunal on the sole ground that the petitioner was not permitted to cross examine the respondent No.1 and other witnesses, the same is in breach of principles of natural justice and therefore, the same are not narrated and/or discussed and detail facts are not stated. It appears from the record that by order passed below Exh.35, the right of the petitioner to cross-examine the respondent was closed and therefore, considering the examination-in-chief of the respondent No.1 and though it was specifically the case of the petitioner that the respondent No.1 was never appointed in the primary section, the tribunal passed the impugned order. It is also required to be noted that in the written submissions dated 23.1.1995 certain documents were produced and it was also the case of the petitioner that the respondent No.1 was never appointed in primary section.

Thus, considering the above, it appears to the Court that on imposition of reasonable costs, if the matter is remanded to the tribunal and one additional opportunity/chance is given to the petitioner to cross-examine the respondent No.1 then it will meet the ends of justice. Considering the above, the impugned judgment and order passed by the tribunal is required to be quashed and set aside. However, at this stage, it is required to be noted that by the inter order dated 16.9.1997 the earlier ad-interim relief was confirmed on condition that the respondent No.1 be absorbed as a teacher in Ganshyam Balmandir run and managed by the petitioner and she be paid salary regularly. It is reported that since then the respondent No.1 is working in the said Ganshyam Balmandir. It is agreed between the learned advocates appearing on behalf of the parties that the said interim order be continued till an appropriate decision is taken by the tribunal on remand. Under the circumstances, till an appropriate decision is taken by the tribunal on remand, the respondent No.1 be continued as a teacher in Ganshyam Balmandir meaning thereby, that the interim order dated 16.9.1997 be continued till then and if the order is passed adverse to the respondent No.1 then the same may be continued for the further period of 4 weeks so as to enable the respondent No.1 to challenge the same before the appropriate forum.

3. For the reasons stated above, the petition succeeds in part. The impugned judgment and order passed by the tribunal dated 20th April, 1995 passed in Application No.224 of 1991 is hereby quashed and set aside and the matter is remanded to the tribunal for fresh decision in accordance with law and on merits after permitting the petitioner to cross-examine the respondent No.1. It is required to be noted that if due to any reason on an additional opportunity/chance given to the petitioner, the respondent No.1 is not cross-examined then a further opportunity/chance will not be given to the petitioner and the petitioner will see to it that the respondent No.1 is cross-examined on the date given by the tribunal unless there are extraordinary circumstances, which may be considered by the tribunal. The petitioner is directed to pay the costs of this petition as well as the costs towards permitting the petitioner to cross-examine the respondent No.1 and of giving an additional opportunity/chance, which is quantified at Rs.5000/-, which the petitioner is directed to pay to the respondent No.1 directly within the period of 4 weeks from today. The petitioner is directed to produce the receipt with regard to the said payment before the tribunal and only on production of such a receipt, the tribunal to proceed further with the application on merits. The tribunal is

directed to decide and dispose of the application on merits within a period of 6 months from the date of receipt of this order.

4. Rule is made absolute to the aforesaid extent.

[ M.R.SHAH, J.]

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